U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE DISTRICT OFFICE Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Bolivia. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraudulent use of a passport to obtain admission to the United States. The record reflects that the applicant is the spouse of a U.S. citizen, [redacted]

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly.

On appeal, counsel contends that the applicant established extreme hardship to the applicant's spouse because, as he is responsible for caring for his terminally ill father, the refusal of the applicant's admission would result in a "Solomonic" choice for the applicant's husband between relocating with his wife or caring for his father. Form I-290B, *Notice of Appeal to the Administrative Appeals Unit* (November 17, 2003). The AAO notes that, although counsel indicated that a more detailed brief would be submitted within 30 days of filing the appeal, as of this date, the record does not contain the brief or any supplemental evidence. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time.

Section 212(i) of the Act provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ..

8 U.S.C. § 1182(i). Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record is reviewed in its entirety and in light of the [redacted] factors, cited above, separately and in the aggregate. The applicant's husband [redacted] was born in the United States. There is no indication that [redacted] has family ties outside the United States, although the issue is not directly addressed in the applicant or counsel's submissions. [redacted] mother and father are divorced, and both live in the United States. A letter from [redacted] mother, who is apparently a Certified Medical Technician (C.M.T.), indicates that [redacted] father suffers from rheumatoid arthritis, with complications including pernicious anemia, serious eye problems, multiple bone breakage, osteoarthritis, chronic pain, and cerebral vascular accidents (strokes). She also states, "[t]he extent of his disability necessitates that someone be available to help him on an ongoing basis with the upkeep of his home and simple tasks that he cannot perform alone. [redacted] have been an extremely important factor in [redacted] remaining independent and in his own home. In reality, [redacted] does not have anyone else to depend on for help, particularly when faced with future hospitalizations and surgery." Other than her self-designation as a C.M.T. in her letter, there is no documentation of [redacted] qualifications. There is no independent documentation [redacted] father's illness, treatment, or prognosis. There is no evidence in the record of other family ties [redacted] the United States.

No documents are specifically addressed to the financial impact of the applicant's departure from the United States. Review of the record shows that [redacted]'s income supports himself and the applicant, with less than 10% contribution by the applicant to the couple's overall income. The record further shows that [redacted] purchased a home in his own name in 2000. On this record, the financial impact of the applicant's departure does not support a finding of extreme hardship.

Medical documentation submitted with the appeal indicates that the applicant's husband suffers from depression, "precipitated by issues involving deportation regarding his wife." *Letter of Wendy C. Spencer, M.D.* (August 1, 2001). The letter states "appropriate treatment . . . involves every three week psychotherapy sessions and . . . [antidepressant medication] at the maximum dose . . .." *Id.* The 2001 letter projected that [redacted] would require such treatment for a minimum of 12-18 months. There has been no supplement to the record to show his current state, treatment, or prognosis. There is no indication that [redacted] suffered from mental illness prior to the depression occurring in anticipation of potential separation from his wife. His depression therefore appears to be a common and expected reaction to a potentially traumatic event.

There are several articles, submitted with the underlying waiver application, addressing country conditions in Bolivia, where [redacted] would relocate to avoid separation from his wife. The documentation has not been updated to reflect country conditions beyond the year 2001, and much of the data dates back to the early 1990's. The documentation shows Bolivian country conditions to include high unemployment, poor sanitary conditions (particularly in rural areas), extremely high poverty levels, systematic economic and health care problems, low life expectancy, and social and political unrest. The latest edition of *Freedom in the World* reports:

> Bolivia's political rights rating declined . . . due to the increased influence of drug money in politics and burgeoning political corruption. . . . According to the UN Development Fund, Bolivia remains a hemisphere leader in unequal distribution of wealth, with the richest 20 percent of the population accounting for 61 percent of the nation's income, and 38 times the income of the poorest 20 percent. Crime [redacted]nd other major cities is increasing steadily. In September 2002, a breakdown in talks between the government and Indian farmers demanding land reform resulted in a partial paralysis of the country and left at least ten peasants and four soldiers dead.

Freedom House. "Bolivia," *Freedom in the World 2003* 98, 100 (2003).

Because the record does not support a finding of extreme hardship if [redacted] remains in the United States, we need not reach the question of whether the applicant has established extreme hardship to her spouse if he relocates with her to Bolivia. If [redacted] remains in the United States, the hardship he faces is no greater hardship than the ordinary disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. He will be able to continue caring for his father, receive medical treatment for his depression as long as is needed, and will not suffer significant financial loss. Although he will suffer emotional loss, the law does not support a finding of extreme hardship on this basis alone. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.